



IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

GENERAL ELECTRIC COMPANY, et al.,
Petitioners,
v.

ROBERT K. JOINER, et al.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

REPLY TO BRIEF IN OPPOSITION

DAVID H. FLINT
SCHREEDER, WHEELER
& FLINT
1600 Candler Building
Atlanta, Georgia 30303
(404) 681-3450
Attorney for Petitioner
Westinghouse Electric
Corporation

EDWARD M. NEWSOM
HAWKINS & PARNELL
4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308
(404) 614-7400
Attorney for Petitioner
Monsanto Company

* Counsel of Record

JOHN G. KESTER *
STEVEN R. KUNYE
ROBERT J. SHAUGHNESSY
WILLIAMS & CONNOLLY
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5069
Attorneys for Petitioner
General Electric Company

TABLE OF AUTHORITIES

Cases:	Page
<i>Affiliated Mfrs., Inc. v. Aluminum Co.</i> , 56 F.3d 521 (3d Cir. 1995)	8
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	9
<i>Bose Corp. v. Consumers Union of United States, Inc.</i> , 466 U.S. 485 (1984)	5
<i>Calder v. Jones</i> , 465 U.S. 783 (1984)	9
<i>Claar v. Burlington N.R.R.</i> , 29 F.3d 499 (9th Cir. 1994)	3
<i>Coalition To Save Our Children v. State Bd. of Educ.</i> , 90 F.3d 752 (3d Cir. 1996)	8
<i>Cooter & Gell v. Hartmarx Corp.</i> , 496 U.S. 384 (1990)	2
<i>Coury v. Road & Driveway Co.</i> , 1996 U.S. App. Lexis 26223 (9th Cir. 1996)	9
<i>Cummins v. Lyle Industries</i> , 93 F.3d 362 (7th Cir. 1996)	9
<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i> , 509 U.S. 579 (1993)	1, <i>passim</i>
<i>Duffee v. Murray Ohio Mfg. Co.</i> , 91 F.3d 1410 (10th Cir. 1996)	4, 7
<i>Duquesne Light Co. v. Westinghouse Elec. Corp.</i> , 66 F.3d 604 (3d Cir. 1995)	8
<i>First Options of Chicago, Inc. v. Kaplan</i> , 115 S. Ct. 1920 (1995)	9
<i>First United Fin. Corp. v. United States Fidelity & Guar. Co.</i> , 96 F.3d 135 (5th Cir. 1996)	10
<i>Fox v. Commissioner</i> , 718 F.2d 251 (7th Cir. 1983)	5
<i>Harris v. Chapman</i> , 1996 U.S. App. Lexis 26607 (11th Cir. 1996)	8
<i>Howlett v. Birkdale Shipping Co.</i> , 114 S. Ct. 2057 (1994)	7
<i>Jackson v. Harvard University</i> , 900 F.2d 464 (1st Cir.), cert. denied, 498 U.S. 848 (1990)	5
<i>Koon v. United States</i> , 116 S. Ct. 2085 (1996)	2, 5
<i>Lust v. Merrell Dow Pharmaceuticals, Inc.</i> , 89 F.3d 594 (9th Cir. 1996)	3

TABLE OF AUTHORITIES—Continued

	Page
<i>O'Conner v. Commonwealth Edison Co.</i> , 13 F.3d 1090 (7th Cir.), cert. denied, 114 S. Ct. 2711 (1994)	3
<i>Ornelas v. United States</i> , 116 S. Ct. 1657 (1996)	6
<i>In re Paoli R.R. Yard PCB Litigation</i> , 35 F.3d 717 (3d Cir. 1994), cert. denied <i>sub nom. General Elec. Co. v. Ingram</i> , 115 S. Ct. 1253 (1995)	3, <i>passim</i>
<i>Peitzmeier v. Hennessy Industries, Inc.</i> , 1996 U.S. App. Lexis 26115 (8th Cir. 1996)	9
<i>Pierce v. Underwood</i> , 487 U.S. 552 (1988)	2
<i>Salve Regina College v. Russell</i> , 499 U.S. 225 (1991)	5
<i>Stutson v. United States</i> , 116 S. Ct. 600 (1996)	7
<i>United States v. Conley</i> , 4 F.3d 1200 (3d Cir. 1993), cert. denied, 510 U.S. 1177 (1994)	5
<i>United States v. L.A. Tucker Truck Lines, Inc.</i> , 344 U.S. 33 (1952)	6
<i>United States v. Paradies</i> , 1996 U.S. App. Lexis 24902 (11th Cir. 1996)	8
<i>United States v. Rahm</i> , 998 F.2d 1405 (9th Cir. 1993)	3
<i>United States v. Vonsteen</i> , 950 F.2d 1086 (5th Cir.), cert. denied, 505 U.S. 1223 (1992)	5
<i>Williamson v. United States</i> , 114 S. Ct. 2431 (1994)	7
<i>Wilton v. Seven Falls Co.</i> , 115 S. Ct. 2137 (1995)..	6
 Rules:	
<i>Federal Rules of Evidence</i> , Rule 702	3, 9
 Miscellaneous:	
<i>Fenner, The Daubert Handbook: The Case, Its Essential Dilemma, and Its Progeny</i> , 29 CREIGHTON L. REV. 939 (1996)	7
<i>Friendly, Indiscretion About Discretion</i> , 31 EMORY L.J. 747 (1982)	6
<i>Note, Developments in the Law—Confronting the New Challenges of Scientific Evidence</i> , 108 HARV. L. REV. 1481 (1995)	6, 7
<i>Wiseman, Judging the Expert</i> , 55 OHIO ST. L.J. 1105 (1994)	6, 7

IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-188

GENERAL ELECTRIC COMPANY, *et al.*,
Petitioners,
v.ROBERT K. JOINER, *et al.*,
Respondents.On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

1. Respondents assert that the District Court was so clearly wrong to exclude these scientific opinions that it would be reversed under any standard of review. Br. Opp. 1, 6. But the dissenting judge did not think so. The dissent emphatically concluded that the District Court had acted well within ordinary discretion and common sense in not allowing unsupported opinions that "leap to the conclusion" "with blue smoke and sleight of hand." P.C.A. 22a. The trial court did not abuse its discretion, the dissent believed, by excluding conclusions with no scientific evidence to support them, *id.* at 23a-24a, 28a, and in declining to allow "blind faith" to fill "the analytical gap," *id.* at 27a.

Respondents alternatively offer a revisionist explanation of the Eleventh Circuit's decision. The Court of Appeals, they say, so completely reexamined and rejected the District Court's ruling that the decision really amounted to *de novo* review. Br. Opp. 1, 7. But a *de novo* standard to review a trial court's application of *Daubert* to particular facts would be totally at variance with the standard of other Circuits. If as respondents argue the Eleventh

Circuit really went even beyond the "particularly stringent" standard it announced, P.C.A. 4a, then that would be all the more reason to grant certiorari.¹

What matters is that the Eleventh Circuit, just as it stated, reviewed the District Court's *Daubert* exclusions under a different standard, one far less deferential than is accorded *Daubert* rulings in any other Circuit except the Third. Just as it said, the Court of Appeals here reviewed in "particularly stringent" detail the District Court's conclusions as to whether the bases of the opinions met the *Daubert* standards. The Court of Appeals reexamined the proffered opinions and the bases they cited and reached its own conclusions. See P.C.A. 8a-16a. In doing so it made its own judgments about matters a district court is better equipped to decide—"multifarious, fleeting, special, narrow facts that utterly resist generalization." *Koon v. United States*, 116 S. Ct. 2035, 2047 (1996), quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 404 (1990), and *Pierce v. Underwood*, 487 U.S. 552, 561-62 (1988). Such judgments "involve fact-intensive, close calls." *Cooter & Gell, supra*, 496 U.S. at 404.

¹ Respondents in their appeal indeed sought to label virtually every part of the District Court's findings with which they disagreed as an error of legal interpretation, subject to *de novo* review. But they also argued that "if a district court uses a proper construction of the Federal Rules of Evidence in ruling on admissibility issues, its rulings are subject to abuse-of-discretion review" and that "abuse-of-discretion review is conducted *more strictly, and with greater scrutiny*, where necessary to ensure that the district court does not substitute its judgment for that of a jury." Reply Brief of Appellants, No. 94-9181, 11th Cir., at 6 n.3 (emphasis supplied). Although respondents tell this Court that "[o]n appeal, Joiner did not attack any exercise of the district court's discretion," Br. Opp. 3, they told the Court of Appeals that "on this record it would be an abuse of discretion not to admit the testimony of Joiner's experts," and that the District Court "erred as a matter of law in ruling the testimony of Joiner's experts inadmissible on the ground that the experts' opinions 'do not fit the facts in this case.'" Brief of Appellants, No. 94-9181, 11th Cir., at 6, 22.

The standard altered the result. For just one example, the Eleventh Circuit reversed the District Court in part for determining that the experts' proffered conclusions were not supported by scientific studies and did not fit the facts of the case. P.C.A. 12a-13a. But at least two Circuits (which apply the "manifestly erroneous" standard) have instructed their district courts that examining experts' conclusions is not cause for reversal, but rather an essential step in applying *Daubert* to determine whether experts' opinions have a basis in science and fit the issues in dispute. See *Lust v. Merrell Dow Pharmaceuticals, Inc.*, 89 F.3d 594, 598 (9th Cir. 1996); *Claar v. Burlington N.R.R.*, 29 F.3d 499, 501 (9th Cir. 1994); *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1106-07 (7th Cir.), *cert. denied*, 114 S. Ct. 2711 (1994). For another example, the Eleventh Circuit, applying its standard, reversed the District Court's conclusion, A. 58a-62a, that two preliminary animal studies did not fit or provide basis in science for claiming causation of the human disease in the case before it. P.C.A. 11a-12a. Yet other Circuits hold that it is not an abuse of discretion to exclude under *Daubert* expert opinions that rely heavily on animal studies. E.g., *Lust v. Merrell Dow, supra*, 89 F.3d at 597. See also P.C.A. 25a-27a.²

2. Respondents evade the central issue. For page after page they seek to demonstrate that the standard of "manifestly erroneous" used in six Circuits is not much different from "abuse of discretion" used in four others. Br. Opp. 8-13.³ But that is not what this petition is about.

² Respondents' procedural summary of the District Court's decision appears designed to confuse. Respondents say that the District Court granted summary judgment based on insufficient evidence of exposure, and then "[a]s a second ground" excluded expert testimony under Rule 702, Fed. R. Evid. Br. Opp. 3. What the District Court in fact did, as the Court of Appeals recognized, was to hold that the proffered expert opinions did not satisfy Rule 702; that *Daubert* exclusion left no evidence to avert summary judgment—the *Paoli* situation. See P.C.A. 68a.

³ Even on that peripheral question, it is puzzling that respondents cite cases that for the most part were decided *before*, and so neces-

For even if one assumed, *arguendo*, that the ten Circuits that use "manifestly erroneous" or "abuse of discretion" were of one mind, that still leaves the Eleventh and Third Circuits off by themselves, applying instead their "particularly stringent" standard of review, P.C.A. 4a, whenever an exclusion under *Daubert* results in summary judgment. The "widespread agreement among the circuits" that respondents perceive, Br. Opp. 8, is a widespread agreement that the standard of review applied by the Eleventh and Third Circuits to *Daubert* exclusions is wrong.⁴

3. One searches through fifteen pages of respondents' brief before finding mention of *Duffee v. Murray Ohio Mfg. Co.*, 91 F.3d 1410 (10th Cir. 1996) (see petitioners' Supplemental Brief), buried in a terminal footnote. Br. Opp. 15 n.2. The Tenth Circuit in *Duffee* certainly did not think that the present case and *Paoli* were applying the same standard of review as the other Circuits, or that it made no difference. The Tenth Circuit—citing this very case—pointed out that as to standard of review of *Daubert* exclusions, the Circuits are split, with the Eleventh and Third Circuits arrayed on one side, and all the other numbered federal Circuits disagreeing with them. 91 F.3d at 1411.

What respondents say when they finally acknowledge *Duffee* is peculiar. They say it is "plainly dicta," Br. Opp. 15 n.2—even though the *Duffee* court called standard of review "[t]he only issue that this court must reach." 91 F.3d at 1410. Respondents also say that "in failing to follow the *Paoli* analysis" *Duffee* resembles many other decisions. Br. Opp. 15 n.2. Indeed it does, because the *Paoli* standard is the law in only two Circuits.

sarily did not address, *Daubert*. See Br. Opp. 9-12. For example, respondents quote at great length, Br. Opp. 9, *United States v. Rahm*, 998 F.2d 1405 (9th Cir. 1993), which was decided prior to *Daubert* and more than a year before *Paoli*.

⁴ Respondents' startling statement to this Court that "appellate court holdings going both ways" are "sorely lacking in the petition," Br. Opp. 13, is inexplicable unless they failed to read pages 6 through 11 of the petition.

4. Respondents argue that the standard of appellate review is just words, mere "terminology," "boilerplate" that is "minor" and doesn't affect outcomes. Br. Opp. i, 1, 8, 14. The real "concerns" by which appellate judges decide cases, respondents explain, "often go unstated." Br. Opp. 14. But appellate judges themselves certainly have not shared respondents' view that the standard of appellate review is a trivial or superficial matter.⁵ Neither has this Court. Just five years ago, this Court emphatically rejected essentially the same dismissive argument plaintiffs now try to revive:

"We decline the invitation to assume that courts of appeals craft their opinions disingenuously. . . .

"Nor does it suffice to recognize that little substantive difference may separate the form of deference articulated and applied by the several Courts of Appeals and the independent appellate review urged by petitioner. . . .

". . . We do not doubt that in many cases the application of a rule of deference in lieu of independent review will not affect the outcome of an appeal. . . .

". . . These few instances, however, make firm our conviction that the difference between a rule of deference and the duty to exercise independent review is 'much more than a mere matter of degree.'"

Salve Regina College v. Russell, 499 U.S. 225, 236-38 (1991), quoting *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 501 (1984). Accordingly, certiorari has been granted many times to resolve circuit splits over the standard of appellate review. See, e.g., *Koon v. United States*, 116 S. Ct. 2035, 2043

⁵ See, e.g., *United States v. Conley*, 4 F.3d 1200, 1204 (3d Cir. 1993) ("the standard of review can be outcome determinative"), cert. denied, 510 U.S. 1177 (1994); *United States v. Vontsteen*, 950 F.2d 1086, 1091 (5th Cir.) ("the standard chosen often affects the outcome of the case"), cert. denied, 505 U.S. 1223 (1992); *Jackson v. Harvard University*, 900 F.2d 464, 466 (1st Cir.) ("the standard of review is crucial"), cert. denied, 498 U.S. 848 (1990); *Fox v. Commissioner*, 718 F.2d 251, 253 (7th Cir. 1983) ("[t]he critical issue in this case is . . . our standard of review").

(1996); *Ornelas v. United States*, 116 S. Ct. 1657, 1661 (1996); *Wilton v. Seven Falls Co.*, 115 S. Ct. 2137, 2139 (1995).*

Further trying to minimize the issue, respondents repeatedly say the circuit split concerns merely "two sentences." See Br. Opp. 1, 6, 8, 15. Those two sentences, however, are the ones that state the standard of review that the Court of Appeals used to reverse the District Court. P.C.A. 4a. Not many words are required for a court of appeals to state the standard of review it is using—particularly when, as here, the Eleventh Circuit also specifically cited and incorporated by page reference the lengthier analysis and exposition by the Third Circuit in *Paoli*. See P.C.A. 4a-5a.⁷ Certainly this Court has never demanded court-of-appeals verbosity as a condition for certiorari.⁸ If standard of review were really as incon-

* Even respondents' secondary references are quite misleading. What Justice Frankfurter actually said in the dissenting sentence incompletely quoted at Br. Opp. 1 was: "I do not use the term 'jurisdiction' because it is a verbal coat of too many colors." *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 39 (1952) (Frankfurter, J., dissenting) (emphasis supplied). He was not talking about abuse of discretion at all. Judge Friendly in a 1982 lecture later picked up the phrase as descriptive of "abuse of discretion" as well. Friendly, *Indiscretion About Discretion*, 31 EMORY L.J. 747, 763 (1982). But in saying that, Judge Friendly was underscoring exactly the point that petitioners make here: that the standard of review *does* matter, that a phrase like "abuse of discretion" may conceal fundamentally different standards, and that "[t]he main thrust of this lecture is that there is not just one standard of 'abuse of discretion' on the part of the trial judge." *Id.* at 783. It is ironic that respondents cite Judge Friendly, who wanted more attention paid to standards of appellate review, as support for ignoring the kind of differences he was attempting to illuminate.

⁷ The discussion in *Paoli* has been called "the most thorough, albeit controversial, judicial analysis of the standard of review issue." Note, *Developments in the Law—Confronting the New Challenges of Scientific Evidence*, 108 HARV. L. REV. 1481, 1528 (1995), but also "without authority or precedent." Wiseman, *Judging the Expert*, 55 OHIO ST. L.J. 1105, 1112 (1994).

⁸ This Court of course regularly grants certiorari to review decisions in which courts of appeals have written less than two

sequential as respondents say, one wonders why the Tenth Circuit in *Dufee*, citing the present case, said that "[t]he only issue that this court must reach is the question of which standard should be used to review decisions to exclude expert testimony under *Daubert* that result in summary judgment." 91 F.3d at 1410-11.

5. The last two paragraphs of respondents' brief—the only ones that finally address the petition—consist of a succession of misstatements. It is extraordinary, for example, that respondents assert to this Court that *Paoli* has "not been relied on to support a holding in *any* subsequent federal appellate decision," "has been effectively ignored inside and outside the Third Circuit," and "is currently of no doctrinal significance and has been effectively ignored." Br. Opp. 15-16 and 15 n.2 (emphasis in original). In the very case before this Court, the standard of *Paoli* was explicitly adopted by another Circuit, the Eleventh. (Respondents call that "an aside." Br. Opp. 16.) And three months ago *Paoli* was quoted and explained by yet another Circuit, the Tenth—which after consideration rejected it. *Dufee*, *supra*, 91 F.3d at 1411. Legal commentators have written about and questioned the *Paoli* holding and pointed out the need for a definitive resolution of the scope of appellate review under *Daubert*.⁹ Of course opinions following the rule of the present case and *Paoli* are not found in other Circuits—the other Circuits disagree with it. But this Court frequently grants certiorari when only one Circuit has deviated from the others, and here on an important and constantly arising issue two have done so.

sentences, or nothing at all. *E.g.*, *Stutson v. United States*, 116 S. Ct. 600, 602 (1996); *Williamson v. United States*, 114 S. Ct. 2431, 2434 (1994); *Howlett v. Birkdale Shipping Co.*, 114 S. Ct. 2057, 2062 (1994).

⁹ Wiseman, *supra* n. 7; Note, *Developments in the Law*, *supra* n. 7, at 1527-29; see also Fenner, *The Daubert Handbook: The Case, Its Essential Dilemma, and Its Progeny*, 29 CREIGHTON L. REV. 939, 1080 (1996) ("The non-*Paoli* cases seem to be correct").

Respondents have no basis whatsoever to say to this Court that "all [sic] the courts are in broad agreement," Br. Opp. 15, or that *Paoli* does not govern in the Third Circuit. They collect in a footnote seven cases they describe opaquely as Third Circuit: "decision[s] addressing evidentiary rulings." Br. Opp. 14. What respondents fail to advise the Court is that none of the cases they cite involved "evidentiary rulings" of the kind reviewed in *Paoli* and here: exclusions of scientific evidence under *Daubert* resulting in summary judgment.¹⁰ Similarly, two recent Eleventh Circuit cases respondents cite, Br. Opp. 15, likewise have nothing at all to do with *Daubert* and the issue here.¹¹

6. The standard of appellate review goes right to the heart of whether *Daubert* will have real meaning. This Court in *Daubert* emphasized that in deciding whether to admit or exclude scientific opinions, district courts are to exercise a "gatekeeping role." 509 U.S. at 597. But what the Third Circuit held in *Paoli*, and the Eleventh Circuit held here, is that the standard of review should be different—and "particularly stringent," P.C.A. 4a—whenever the gatekeeper bars the gate to unsupported scientific opinions, instead of leaving it open. Today in the Third

and Eleventh Circuits district judges face a more hostile review and a more likely reversal if they exclude testimony purportedly based on science than if they let it in. Such a tilt has no support in Rule 702 and is contrary to the teaching of *Daubert*. It is also contrary to this Court's holdings, in many contexts, that have rejected skewed rules that would apply one standard if a decision under review came out one way, but a stricter one if it came out the other. See, e.g., *First Options of Chicago, Inc. v. Kaplan*, 115 S. Ct. 1920, 1926 (1995) ("the reviewing attitude that a court of appeals takes toward a district court decision should depend . . . not upon what standard of review will more likely produce a particular substantive result"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Calder v. Jones*, 465 U.S. 783, 790-91 (1984).

7. Since the petition for certiorari was filed, the other courts of appeals have continued to reject the standard followed by the Eleventh and Third Circuits. See *Cummins v. Lyle Industries*, 93 F.3d 362, 367 (7th Cir. Aug. 16, 1996) ("we will not disturb the district court's findings unless they are manifestly erroneous"); *Coury v. Road & Driveway Co.*, 1996 U.S. App. Lexis 26223 at *2 (9th Cir. Oct. 2, 1996) ("we will uphold the court's decision to exclude expert testimony unless it is 'manifestly erroneous'"); *Peitzmeier v. Hennessy Industries, Inc.*, 1996 U.S. App. Lexis 26115 at *6 (8th Cir. Oct. 4, 1996) ("Decisions concerning the admission of expert testimony lie within the broad discretion of the trial court, and these decisions will not be disturbed on appeal absent an abuse of that discretion"). And a month ago, the Fifth Circuit specifically declined to hold that the standard of appellate review should be more stringent when exclusion of expert testimony results in summary judgment:

"The admissibility of expert testimony is governed by the same rules, whether at trial or on summary judgment. And we review the decision of the trial court by the same abuse of discretion standard."

¹⁰ *Coalition To Save Our Children v. State Bd. of Educ.*, 90 F.3d 752 (3d Cir. 1996), and *Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604 (3d Cir. 1995), were exclusions not based on *Daubert*. *Affiliated Mfrs., Inc. v. Aluminum Co.*, 56 F.3d 521 (3d Cir. 1995), did not involve any expert issue at all. And the other four cases cited by respondents in their footnote involved *Daubert* rulings at trial; the "particularly stringent" or "hard look" standard of the present case and *Paoli* does not reach that situation, instead applying to pretrial exclusions under *Daubert* that result in summary judgment.

¹¹ *Harris v. Chapman*, 1996 U.S. App. Lexis 26607 (11th Cir. 1996), affirmed admission of testimony from a fact witness who "stated no 'opinion,' let alone an expert one." *Id.* at *14. *United States v. Paradies*, 1996 U.S. App. Lexis 24902 (11th Cir. 1996), affirmed exclusion of testimony on law from a former Chief Justice of Georgia presented as a "legal expert."

First United Fin. Corp. v. United States Fidelity & Guar. Co., 96 F.3d 135, 136-37 (5th Cir. 1996).

CONCLUSION

For the reasons stated herein and previously, certiorari should be granted.

Respectfully submitted,

DAVID H. FLINT
SCHREEDER, WHEELER
& FLINT
1600 Candler Building
Atlanta, Georgia 30303
(404) 681-3450

*Attorney for Petitioner
Westinghouse Electric
Corporation*

EDWARD M. NEWSOM
HAWKINS & PARNELL
4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308
(404) 614-7400

*Attorney for Petitioner
Monsanto Company*

* Counsel of Record

November 5, 1996

JOHN G. KESTER *
STEVEN R. KUNET
ROBERT J. SHAUGHNESSY
WILLIAMS & CONNOLLY
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5069

ANTHONY L. COCHRAN
CHILIVIS, COCHRAN,
LARKINS & BEVER
3127 Maple Drive, N.E.
Atlanta, Georgia 30305
(404) 233-4171

*Attorneys for Petitioner
General Electric Company*